

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

THIS ITEM WAS CONTINUED FROM THE OCTOBER 12, 2004 BCC REGULAR MEETING

**SUBJECT:** Appeal of the Board of Adjustment's decision to deny a request for special exception to establish gasoline pumps as an accessory use to a convenience store in the PUD (Planned Unit Development District).

**DEPARTMENT:** Planning & Development

**DIVISION:** Planning

**AUTHORIZED BY:** Donald Fisher

**CONTACT:** Francisco Torregrosa **EXT.** 7387

Agenda Date 10/26/04 Regular ☐ Consent ☐ Work Session ☐ Briefing ☐  
Public Hearing – 1:30 ☐ Public Hearing – 7:00 ☒

**MOTION/RECOMMENDATION:**





1. **UPHOLD** the Board of Adjustment's decision to deny the request for special exception to establish gasoline pumps as an accessory use to a convenience store in the PUD (Planned Unit Development District); (Micah Savell for Trinity Capital LTD, applicant); or
2. **REVERSE** the Board of Adjustment's decision to deny the request for special exception to establish gasoline pumps as an accessory use to a convenience store in the PUD (Planned Unit Development District); (Micah Savell for Trinity Capital LTD, applicant); or
3. **CONTINUE** the request to a time and date certain.

(District 1 - Maloy)

(Francisco Torregrosa, Planner)

This item had been scheduled for the July 27, 2004 BCC regular meeting but was continued to the September 28, 2004 BCC regular meeting at the request of the applicant. Again at the request of the applicant, this item was continued from the September 28, 2004 BCC regular meeting to the October 12, 2004 BCC regular meeting. Lastly, this item was continued from the October 12, 2004 BCC regular meeting to the October 26, 2004 BCC regular meeting so that the applicant's attorney could discuss the legal status of the request with the County Attorney.

After careful review of documents pertaining to the zoning history of this property, staff consulted with the County

Reviewed by:	
Co Atty:	
DSF:	
Other:	
DCM:	
CM:	
File No. <u>ph700pdp03</u>	

Attorney's Office and found that the Development Order prepared and signed by the applicants following a partial rezoning of the PUD during the March 12, 2002 BCC regular meeting is in disagreement with the prepared staff report and statements made at the aforementioned BCC meeting. In particular, the executed Development Order and Developer's Commitment Agreement excludes commercial uses which were allowed by a previous Development Order (1990) and which neither the applicant nor staff requested be removed as permitted uses on the commercial tracts. The original PUD Development Order approved in 1990 allowed certain commercial uses including gasoline pumps. For this reason, staff believes that the proposed gasoline pumps accessory to a convenience store use is a permitted use in this PUD and a special exception should not have been required.

Unfortunately, the signed Developer's Commitment Agreement (which was signed by the property owner) and the approved Final Master Plan submitted by the applicant in 2002 did not contain language that specified gasoline pumps as a permitted use in the PUD. This discrepancy was discussed with the applicant earlier this year, and the applicant was given two choices: 1) apply to amend the PUD to reinsert the language regarding gasoline pumps as a permitted use or 2) apply for a special exception. The applicant chose to apply for the latter.

At this stage, the applicant now has on the public record an application for a special exception that has been denied by the Board of Adjustment and appeal of that decision pending before the Board of County Commissioners. The applicant may continue with the appeal, or the applicant may withdraw the appeal and file for an amendment of the PUD, or the applicant may wait until April 26, 2005, and apply for the special exception again.

If there are any changes regarding the status of this request, staff will notify the Board immediately and forward additional information as soon as possible.

#### **BOARD OF ADJUSTMENT DECISION:**

On April 26, 2004, the Board of Adjustment denied a request to establish gasoline pumps as an accessory use to a convenience store in the Trinity Retail Center PUD (Planned Unit Development District) located at the southeast corner of the intersection of Tuskawilla Road and S.R. 426. The Board of Adjustment based its denial on the potential of the proposed development to adversely impact the public interest by creating a cut-through path along the service drive of the proposed convenience store. The result would be the avoidance of the traffic signal at Tuskawilla and S.R. 426 and the subsequent generation of undue traffic adjacent to the existing town homes. Staff had recommended approval of the request with conditions.

**STAFF RECOMMENDATION:**

Based upon the findings stated in the staff report, staff recommends that the Board of County Commissioners reverse the decision of the Board of Adjustment and approve the request to establish gasoline pumps as an accessory use to a convenience store in the PUD (Planned Unit Development District) with the conditions as stated in the staff report.

## STAFF REPORT

GENERAL INFORMATION	Applicant: Micah Savell for Trinity Capitol LTD Location: SE corner of Tuskawilla Rd. & S.R. 426 Zoning: PUD (Planned Unit Development District)																								
BACKGROUND/ REQUEST	<ul style="list-style-type: none"><li>• The property was originally rezoned to PUD in 1990. Uses allowed east of Tuskawilla Road included car washes and convenience stores with gasoline pumps. The PUD was amended in 2002 to allow town homes and commercial uses along S.R. 426.</li><li>• The applicant proposes to establish gasoline pumps as an accessory use to a convenience store in the Trinity Retail Center PUD.</li><li>• The Developer's Commitment Agreement restricts commercial uses to those of the C-1 District, which allows convenience stores with gasoline sales by special exception.</li></ul>																								
ZONING & FLU	<table><tr><th>Direction</th><th>Zoning</th><th>FLU</th><th>Use of property</th></tr><tr><td>Site</td><td>PUD</td><td>PD</td><td>Vacant Commercial</td></tr><tr><td>North</td><td>PUD &amp; PCD</td><td>HIP-TR &amp; PD</td><td>Convenience store &amp; residential</td></tr><tr><td>South</td><td>PUD</td><td>HIP-TR</td><td>Townhomes</td></tr><tr><td>East</td><td>PCD</td><td>HIP-TR</td><td>Self storage</td></tr><tr><td>West</td><td>PUD</td><td>HIP-TR</td><td>Townhomes</td></tr></table>	Direction	Zoning	FLU	Use of property	Site	PUD	PD	Vacant Commercial	North	PUD & PCD	HIP-TR & PD	Convenience store & residential	South	PUD	HIP-TR	Townhomes	East	PCD	HIP-TR	Self storage	West	PUD	HIP-TR	Townhomes
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STANDARDS FOR GRANTING A SPECIAL EXCEPTION; LDC SECTION 30.43(b)(2)	<p><b><u>Is not detrimental to the character of the area or neighborhood or inconsistent with trends of development in the area:</u></b></p> <p>The proposed use would represent the development of a vacant commercial tract within the Trinity Retail Center PUD. The proposed use is similar to other commercial uses, including convenience stores occurring at the intersection of Tuskawilla Road and S.R. 426. For this reason, staff does not believe the proposed gasoline pumps, as an accessory use to a convenience store, would be detrimental to the character of surrounding development.</p> <p><b><u>Does not have an unduly adverse effect on existing traffic patterns, movements and volumes:</u></b></p> <p>The proposed convenience store and 10 gasoline pumps (20</p>																								

fueling positions) is estimated to generate between 200 and 270 trips per peak (a.m. and p.m.) hour of operation. According to the 2003 travel time and delay study conducted by the Traffic Engineering Division, the intersection is currently operating at a level of service (LOS) "F" during a.m. peak time and LOS "E" during p.m. peak time. However, capacity along the adjoining road network was determined to be sufficient for the range of permitted and special exception uses (including convenience stores with accessory gasoline pumps) allowable in the Trinity Retail Center PUD's commercial tract at the time of final master plan approval.

**Is consistent with the Seminole County Comprehensive Plan (Vision 2020):**

The Seminole County Vision 2020 Comprehensive Plan describes HIP-TR (Higher Intensity Planned Development – Transitional) as a future land use category appropriate for a variety of higher intensity uses (including convenience stores with accessory gasoline pumps) that are located at the intersections of major roadways and along major roadways as infill development where the use is already established.

With the imposition of staff's recommended conditions, the proposed convenience store, with accessory gasoline pumps, would be consistent with this description, given the subject property's location on W. S.R. 426, which is defined as a principal arterial roadway.

**Meets any additional requirements specified in the code section authorizing the use in a particular zoning district or classification:**

Based on the submitted site plan, the proposed use would meet the minimum area and dimensional requirements of the Trinity Retail Center PUD that equate to those of the C-1 District.

**Will not adversely affect the public interest:**

With the imposition of staff's recommended conditions, the proposed use would be consistent with other convenience stores with gasoline pumps located on the northeast and northwest corners of this intersection. In addition, the site shall meet the requirements of the newly adopted lighting ordinance

	design standards to minimize off-site glare and illumination.
<b>STAFF FINDINGS</b>	<p>Staff believes the proposed use would be compatible with the trend of development in the area for the following reasons:</p> <ul style="list-style-type: none"> <li>• The property is served by existing water and sewer services;</li> <li>• There are no identified areas of environmental concern;</li> <li>• The property is a commercial tract of the Trinity Retail Center PUD to be developed for C-1 uses according to the Developer's Commitment Agreement;</li> <li>• The proposed use would not have a significant adverse impact on existing traffic patterns, movements or volumes;</li> <li>• The proposed use would be consistent with the Comprehensive Plan's designation of HIP-TR future land use for the subject property;</li> <li>• The proposed use would not adversely affect the public interest; and</li> <li>• The proposed use would be compatible with the commercial character of development along this segment of W. State Road 426.</li> </ul>
<b>STAFF RECOMMENDATION</b>	<p>Based on the stated findings, staff recommends the Board of County Commissioners reverse the decision of the Board of Adjustment and approve the request for special exception with the imposition of the following conditions:</p> <ol style="list-style-type: none"> <li>1. Hours of operation shall be limited to 6:00 a.m. to 12:00 a.m.; truck delivery hours shall be limited to 7:00 a.m. to 11:00 p.m.</li> <li>2. Electrical equipment facing south of the building shall be screened with appropriate landscaping if on the ground or screened with a parapet wall if on the roof of the building;</li> <li>3. No illuminated signage shall be allowed along the southern face of the proposed building; illuminated signs shall be turned off when the business is closed;</li> <li>4. Automotive mechanical repairs shall be prohibited;</li> <li>5. The outdoor storage of supplies, materials or merchandise shall be prohibited;</li> <li>6. The site shall be developed in accordance with the approved Developer's Commitment Agreement for the Trinity Retail Center PUD;</li> <li>7. An active setback and buffer shall apply along the south property line, as required by the Land Development Code; the dumpster depicted on the proposed site plan shall be removed from the required buffer;</li> </ol>

	<ol style="list-style-type: none"> <li>8. A listed species survey shall be conducted prior to final site plan approval;</li> <li>9. The proposed right in / right out driveway shall be dependent upon FDOT approval; and</li> <li>10. The proposed use shall otherwise comply with the Seminole County Comprehensive Plan and Land Development Code.</li> </ol>
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**ATTACHMENTS:** Trinity Retail Center PUD DCA  
Zoning & Future Land Use maps  
Correspondence  
Application for special exception  
Location map  
Property appraiser report  
Proposed development order  
Board of Adjustment meeting minutes  
Recorded denial order  
Proposed site plan  
Decision on appeal